

# **Exhibit K**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

M WAIKIKI LLC,

Plaintiff,

- against -

MARRIOTT HOTEL SERVICES, INC., I.S.  
INTERNATIONAL, LLC and IAN  
SCHRAGER,

Defendants,

Index No.: 651457/2011

IAS Part 3

Justice Bransten

**AFFIDAVIT OF GABRIELA FONTANA**

MARRIOTT HOTEL SERVICES, INC.,

Counterclaim-Plaintiff,

- against -

M WAIKIKI LLC,

Counterclaim-Defendant.

Gabriela Fontana, being duly sworn, deposes and says as follows:

1. I am currently the Assistant Food & Beverage (“F&B”) Manager for the Waikiki EDITION Hotel in Honolulu, Hawaii (the “Hotel”). As the Assistant F&B Manager, I oversee all bars and room service at the Hotel.
2. Before assuming my position as Assistant F&B Manager, I was one of several F&B Supervisors at the EDITION.
3. On August 28, 2011, I was performing my normal responsibilities at the Hotel. It was a relatively slow night. Around 2 a.m., while coming back from Crazybox – the Hotel’s nightclub – and headed to Lobby Bar on the ground floor of the Hotel near the main entrance, I was

stopped by one of the EDITION's security guards (Tristan Fung) and a woman whom I did not recognize. The woman introduced herself to me as a member of the Hotel's new management, Aqua Hotels & Resorts. When I asked whether she could explain what was going on, she said that she would have a human resources team present to answer my questions. She also told me that one of the bartenders at the EDITION, Ikaika Villa, was her nephew.

4. After being introduced to the woman described above, I walked out of Lobby Bar and into the Hotel lobby. In the lobby, I saw a number of men who appeared to be security personnel. They were wearing white shirts containing a company logo, full headsets with microphones, and lanyards with name tags that said "Modern Honolulu" – the new name of the hotel according to the woman representing Aqua.

5. Shortly after entering the lobby, I went downstairs to brief Laura Modica, Director of Nightlife & Entertainment, on the situation despite the fact that Fung had advised me not to do so. When Laura and I returned to the lobby, the new management team was behind the front desk printing reports from Opera, the EDITION's computer system. Later that morning, I observed Aqua printing additional documents from Opera. The printed documents were voluminous enough to fill a small office.

6. Representatives of the new management company eventually requested that Modica follow them to the security office. Later the same day, I learned that Aqua had terminated her.

7. As noted, the woman who first approached me about the takeover is the aunt of one of the EDITION's bartenders. That bartender, Ikaika Villa, ultimately informed me that he had known about the takeover for several weeks and had therefore taken much of his paid vacation during that time. He said that the change would be a six-month transition and that I should not worry because I would not be fired and might even be promoted.

8. After holding the foregoing discussion with Villa, which he told me was confidential, Aqua representatives met my staff in Lobby Bar and advised the staff that the Hotel was under new management, that there was no longer any EDITION, and that the staff should proceed to the ballroom to sign on with Aqua.

9. After my staff was told of the change in management, I went to the Hotel's back-of-the-house spaces. That is the area where guests do not go, and where Hotel employees conduct their work. While there, I observed that the doors to the computer room, front office, bank room, and Shastri Maraj's office were all open. Maraj is in charge of IT and computers for the Hotel.

10. I attempted to complete the Hotel's bank drop. Many employees have cash banks that they check out during their shift and then check back in at the end of their shifts. When I went to return my bank, one of the EDITION security officers went to the security office to get a key so that the new security team that arrived with the Owners could open the bank vault. When the security officer left, I went into the bank drop room and noticed that Aqua had already changed the bank drop slips. I refused to sign the new slips, which said "Modern Honolulu," and signed only the EDITION slip.

11. In addition to changing the bank slips, Aqua took all of the bartenders' bank keys away after counting their house banks. The company then told the bartenders that they needed to come in fifteen minutes early the following day to get new bank keys for their shifts.

12. Aqua asked numerous questions about the EDITION's bank processes. Maria Burke gave Aqua any information it requested, as she told me that she was afraid that she would be fired if she did not. I did not answer any of Aqua's questions about bank processes.

13. Aqua's interim Director of F&B, whose first name is Brian, sought to obtain various information from me, including the employee contact list, employee schedules, and upcoming

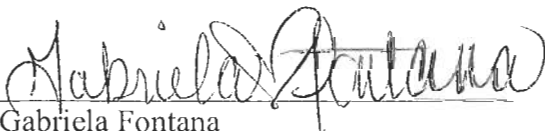
BEOs (banquet event orders). At one point, he told me that he would deny me the right to talk to my staff if I did not sign with Aqua. I told him that I would not sign.

14. In addition to the foregoing, Aqua removed all EDITION signage from the Hotel, cut the EDITION labels off of all items in the guest rooms (*e.g.*, towels, robes, etc.), removed EDITION labeling from office spaces (including the F&B office), and altered the music playing in public spaces at the Hotel.

15. After I exited the building, I was told by two employees from Guest Services that Kawika Smith, EDITION's previous Guest Services Manager, told them they had to sign with Aqua or be fired.

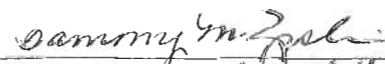
16. Upon re-entering the Hotel to retrieve my personal belongings, I learned that Mark Danielson, an F&B manager on medical leave prior to the takeover, was on property. Danielson had apparently showed other staff an ID indicating that he was the new Director of F&B. The interim Director of F&B denied that Danielson had been given any such position and noted that Danielson had obtained a medical waiver to come into the Hotel.

I declare under penalty of perjury that the foregoing is true and correct.

  
Gabriela Fontana

Sworn to before me  
this 29<sup>th</sup> day of August, 2011

LS.

  
Notary Public, State of Hawaii  
TAMMY M. YOSHIMURA  
My commission expires 09-22-2012

Doc. Date: 08/29/2011 # Pages: 4

Notary Name: Tammy M. Yoshimura First Circuit

Doc. Description: Affidavit of Gabriela Fontana

Tammy M. Yoshimura 08/29/11 <sup>L.S.</sup>  
Notary Signature Date (Stamp or Seal)